
(2016) 01 TP CK 0026
In the Tripura High Court
Case No : WP(C) 138 of 2014

Priyangshu Saha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Citation : (2016) 01 TP CK 0026

Hon'ble Judges : Deepak Gupta, C.J. and S. Talapatra, J.

Bench : Division Bench

Advocate : S. Dutta, Advocate, for the Appellant; T.D. Majumder, G.A., for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. The short question which arises for decision in this writ petition is,

"Whether the legal heirs of an employee who is appointed on fixed pay basis can claim family pension on the death of the employee once the employee had completed the requisite qualifying service in terms of the Central Civil Services (Pension) Rules, 1972 [hereinafter referred to as the CCS(Pension) Rules] as amended in the State of Tripura?"

2. As per Rule 54 of the CCS(Pension) Rules, the qualifying service for grant of family pension is one year. We may make reference to Rule 54(1) of the CCS(Pension) Rules which reads as follows:--

"54(1). The provisions of this rule shall apply--

(a) to a Government servant entering service in a pensionable establishment on or after the 1st January, 1964; and

(b) to a Government servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for Central

Government Employees, 1964, contained in the Ministry of Finance, Office Memorandum No. 9 (16)-E. V(A)/63, dated the 31st December, 1963, as in force immediately before the commencement of these rules.

[NOTE.--The provisions of this rule will also extend, from 22nd September, 1977, to Government servants on pensionable establishments who retire/died before 31-12-1963, as also to those who were alive on 31-12-1963, but had opted out of 1964 Scheme.]

[(2) Subject to the provisions of sub-rule 13-B and without prejudice to the provisions contained in sub-rule (3), where a Government servant dies--

(i) after completion of one year of continuous service;"

3. The undisputed facts are that the deceased Sipra Saha joined service as a Graduate teacher on 25.3.2010 after she was duly selected. She was appointed on fixed pay basis. There is a practice in the State of Tripura that even against regular post, employees are initially appointed on fixed pay basis and are regularized only on completion of 5(five) years service. On completion of 5 years service without any other test or screening being done they are placed in the regular pay scale.

4. We are not commenting on the legality or morality of this practice. The fact, however, remains that the persons are selected after following a regular selection process. These persons are appointed in accordance with the rules against regular vacancies against the sanctioned posts as per the rules. Instead of appointing them in the regular scale, they are appointed on a fixed pay basis wherein they get much lesser emoluments than regular employees.

5. The fact, however, remains that this is a regular appointment. This is an appointment made after advertisement. This appointment is made after following the due selection process as per the law. The persons do not have to be recruited again afresh as regular employees. They are only regularized after 5 (five) years without undergoing any fresh selection process. For all intents and purposes, the appointment on fixed pay basis is an appointment in the service against a vacant post existing in the service as per the recruitment and promotion rules.

6. That brings us to rule 13 of the CCS (Pension) Rules which reads as follows:--

"13. Commencement of qualifying service: Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that--

(a) in the case of a Government servant in a Group "D" service or post who held

a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19."

7. Rule 13 does not differentiate between different types of service and it states that the qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or in temporary capacity. A fixed pay employee stands on a better footing than a temporary employee or an officiating employee and if an officiating employee and a temporary employee are eligible for their service to be counted for purposes of pension, then we see no reason why a fixed pay employee who is a regular employee for all intents and purposes is not also granted the same benefit. Reference may also be made to sub-rule 14 of Rule 54 which reads as follows:--

"(14) For the purposes of this rule,--

(a) "continuous service" means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include-

(i) period of suspension, if any; and

(ii) period of service, if any, rendered before attaining the age of eighteen years;"

The only services excluded are period of suspension and period of service rendered before attaining the age of 18 years.

8. Rule 2 of the CCS(Pension) Rules makes the rules applicable to all types of employees except those specifically excluded therein. Rule 2 reads as follows:--

"2. Application:

Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before the 31st day of December, 2003 including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to--

(a) railway servants;

(b) persons in casual and daily-rated employment;

(c) persons paid from contingencies;

(d) persons entitled to the benefit of a Contributory Provident Fund;

- (e) members of the All India Services;
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;
- (g) persons employed on contract except when the contract provides otherwise; and
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force."

The only category of Government servants who are excluded are persons appointed in casual and daily rated employment or persons who are paid from contingencies or persons who are granted the benefit of Contributory Provident Fund. All other Government servants except those employed under contract are entitled to the benefit of the Pension Rules.

9. There is no dispute that the deceased was in Government service and holding a civil post. This is a post in the pensionable establishment and the Government can exclude the post from pensionable establishment only if the employees are given benefit of the contributory provident fund scheme. There has to be some pension scheme for the benefit of the employees. Therefore, we have no hesitation in holding that the minor son of the deceased is entitled to family pension as per the rules.

10. We, therefore, allow the writ petition and direct the respondents to ensure that family pension in favour of the minor child is calculated and disbursed to the child through his duly appointed guardian latest by 31st May, 2016. The arrears accruing up to 31.5.2016 shall not be paid to the father but shall be put in a fixed deposit in the name of the child till the child attains the age of 21 years. The pension payable w.e.f. 1st June, 2016 shall be paid to the minor through his guardian who shall utilize the amount for the maintenance and upkeep of the minor.

11. The writ petition is disposed of in the aforesaid terms. No costs.